IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8131 OF 2004

United Diamonds Limited & others Petitioners

versus

Union of India and others Respondents

Mr.N.G.Thakkar with Mr.H.N.Thakore with Ms.Chandra Sonpal i/by Thakore Jariwala & Associates, adv. for petitioners.

D.A.Dubey & V.R.Mishra, adv. for Union of India

Mr.Sancheti with Mrs.N.S.Don-Theba i/by Theba & Associates, adv. for R.2

Madhur Rai i/by M/s.Negandhi Shah & Himayatullah, adv. for R-4.

Rajiv Gawde i/by K.Ashar & Co; adv. for R-6.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 29th November 2004

PC :

1. Rule. Learned counsel for Respondents waive service. By consent, Rule is made returnable forthwith. Heard Advocates.

2. By this petition the Petitioners are seeking

to impugn the order passed by the Debts Recovery Appellate Tribunal (hereinafter referred to as "DRAT" for short) dated 9th August 2004 under section 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, hereinafter for brevity's sake referred to as "the Act", directing the Petitioners to deposit a sum of Rs.7.00 crores (Rs.Seven crores only) within eight weeks, failing which the Appeals to stand rejected without any further recourse.

3. Briefly the facts giving rise to this petition are that there were seven Original Applications filed by the Respondent Bank SBI Commercial & International Bank against companies of United Group i.e. the Petitioners. The matters were settled for aggregate Rs.7.00 crores from out of which Rs.50.00 lakhs (Rs.Fifty lakh only) were paid under consent terms in the Tribunal. A common Recovery Certificate was issued on 19th October 2000 accordingly. In the execution of said Recovery Certificate, attachment warrants against two properties were issued on 11th December 2001. The Recovery Officer appointed a Receiver on 6th August 2002 to take actual possession of property namely 20, Barakhamba Road, Connaught Place, New Delhi 110 001 on 30th September 2002 and symbolic

possession of property namely 16, Barakhamba Road, Connaught Place, New Delhi 110 001. The proclamation of sale was published on 24th December 2002 and auction was to be held on 10th January 2003. The Petitioners filed Appeal Nos.5/2003 and 6/2003 before DRT challenging the proclamation of attachment and sale which came to be dismissed by the Tribunal on 1st October 2003. In the mean time, the auction proceeded with and the sale was effected of property 20, Barakhamba Road, Connaught Place, New Delhi. The said property was purchased by Respondent no.6 for Rs.9.00 crores (Rs.Nine crores only). Petitioners objected to sale before the Recovery Officer vide Exhibit-44. The objections were over-ruled and the sale was confirmed by the Recovery Officer on 11th November 2003. Being aggrieved, Petitioners preferred Appeal No.34 of 2003. In this appeal the Petitioners inter alia contended that entire property is worth Rs.60.00 crores and the petitioners' half share would be Rs.30.00 crores, but this was sold for a paltry amount of Rs.9.00 crores. Reliance was placed on a report of the Government approved Valuer and Minutes dated 31st January 2003 in Mediation Proceedings before Justice A.S.Anand (Retired CJI), where the family members have stated valuation of half share of petitioners to be

Rs.30.00 crores. The argument before the Tribunal was that the property was grossly under-valued and the sale of the property for a sum of Rs.9.00 crore was wholly illegal and unconscionable. This appeal was dismissed by the Tribunal vide order dated 9th December 2003. Against the orders dated 1st October 2003 and 9th December 2003, three separate appeals were filed before the DRAT.. It appears that the advocate appearing for appellants made a categorical statement before learned Chairperson of the DRAT that the appeals are confined only to the validity of auction sale and they are not challenging the Recovery Certificates. The learned Chairperson of DRAT, however, vide impugned order dated 9th August 2004 directed the petitioners to deposit a sum of Rs.7.00 crore by way of pre-deposit under section 21 of the Act.

4. Mr.Thakkar, learned counsel appearing for petitioners strenuously contended before us that the impugned order for deposit of Rs.7.00 crore was passed on total misinterpretation of Section 21 of Act. According to the learned counsel the class of appeals which are intended to be covered under section 21 would be the appeals to challenge the orders passed by the Presiding Officer determining the amount to be recovered

from the appellants and not all types of appeals. Mr.Thakkar urged that a plain reading of Section 21 of Act would show that the Legislature intended that the judgement debtors against whom monetary decrees are passed/recovery certificates are issued and who challenge decrees/recovery certificates by filing appeals before the DRAT, would be covered by Section 21. There are various other types of orders against which appeals would lie to DRAT arising out of orders of Presiding Officer of DRT i.e. orders of attachment and sale, injunction, exclusion of counter claims, disbursement of sale proceeds etc.. Mr.Thakkar submitted that in all such matters question of pre-deposit would not arise as the challenge is not to the recovery certificate issued by the Tribunal. Similarly, according to Mr.Thakkar, the appeal against the order of Recovery Officer in pursuance of execution of a recovery certificate where the complaint is that the sale is effected at a gross under-valued amount or the price is much lower than the reserve price or there is a fraud or material irregularity while conducting the sale, the DRAT would not be justified in directing pre-deposit as per Section 21 of the Act.

5. On the other hand, Mr.Sancheti for

respondents 2 to 6 and Mr.Godbole for respondents 7 to 10 submitted that provisions of Section 21 would be attracted to all the appeals and it will not be proper to make classification of different categories of appeals for the purpose of Section 21 of Act. Learned counsel submitted that learned Chairperson has directed petitioners to deposit 50% of the amount of decreetal amount and this Court can not sit over in appeal over the order of DRAT and, therefore, no interference is warranted with discretionary order passed by the DRAT..

6. As the main issue is about interpretation of Section 21 of the Act, we reproduce section 21, which reads as follows :-

> "21. Deposit of amount of debt due, on filing appeal-. :- Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal under section 19 :
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> Provided that the Appellate Tribunal may, for reasons to be recorded in writing waive or reduce the amount to be deposited under this section."

The section applies to an appeal preferred by any person from whom an amount of debt is due to the bank etc. and stipulates that such an appeal shall not be entertained by the Appellate Tribunal unless the appellant has deposited with the Appellate Tribunal 75% amount of the debt so due to him as determined by the Tribunal u/s 19 of Act. There is some force in the argument of Mr.Thakkar that the provision for pre-deposit would ordinarily apply to a case where amount as determined by DRT is sought to be challenged in the appeal. Other categories of appeals especially intorlocutary appeals would not be governed by Section 21. However, in our opinion, it is not necessary to decide this issue as we are of the view that in the facts and circumstances of the case it would be wholly unfair and unjust to direct the petitioners to deposit Rs.7.00 crores and this is fit case for waiver of pre-deposit. The appeals preferred by the petitioners are confined only to the question of validity of auction sale. The auction sale is effected and the auction purchaser has been put in possession of the property. The sale proceeds have been duly paid to the respondent bank and there is no dispute that decree stands fully satisfied. Therefore, it would not be proper to direct the petitioners to deposit the amount when

the bank has already attached and sold the property and received entire sale proceeds. This is a fit case for directing waiver of the pre-deposit as provided u/s 21 of Act. Accordingly we set aside the impugned order dated 9th August 2004 and direct the DRAT to waive pre-deposit u/s 21 of Act and hear the appeals filed by the petitioners on their own merits and in accordance with law. The DRAT is requested to decide the appeals expeditiously and preferably within six months. Petition disposed of accordingly.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)